PATENT

Case No. NL 021260

(7790/448)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re patent application of:	)
	)
JOANNES GREGORIUS BREMER	)
	) Examiner: SHAH, SAMIR M.
Serial No.: 10/537,878	)
	) Group Art Unit: 2856
Filed: JUNE 7, 2005	)
	)
For: ACTIVITY MONITORING	)

APPEAL BRIEF

Mail Stop **Appeal Brief - Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant herewith respectfully presents a Brief on Appeal as follows:

TABLE OF CONTENTS

1.   <u>REAL PARTY IN INTEREST</u>

The real party in interest is the assignee of record U.S. Philips Corporation, a

Delaware corporation having an office and a place of business at 1251 Avenue of the

Americas, New York, NY 10020-1104.

2.   <u>RELATED APPEALS AND INTERFERENCES</u>

Appellant and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

3.   <u>STATUS OF CLAIMS</u>

Claims 1-13 are currently pending in the present application, and are the claims

on appeal. <u>See</u>, Claims Appendix.

4. STATUS OF AMENDMENTS

Appellant filed an after final request for reconsideration under 37 C.F.R. §1.116

in response to a Final Office Action dated May 5, 2006. The request for reconsideration

did not contain an amendment to claims 1-13.

5.   SUMMARY OF THE CLAIMED SUBJECT MATTER

As illustrated in FIG. 1 and claimed by independent claim 1, an activity monitor 1 comprises a measurement unit 11 and a processor 12. Measurement unit 11 includes a plurality of motion sensors (not shown) operable to produce respective sensor signals indicative of motion experienced by an object the activity monitored is attached to. Processor 12 receives the sensor signals from measurement unit 11 and processes the sensor signals in accordance with a predetermined method wherein activity monitor 1 monitors and processes the sensor signals discontinuously in time. See, *U.S. Patent Application Serial No. 10/537,878* at page 2, line 23 and at page 3, line 16.

As illustrated in FIG. 3 and claimed by independent claim 9, a method of monitoring activity using a plurality of motion sensors which are operable to produce respective sensor signals indicative of motion experienced by an object. The method involves receiving the sensor signals and processing the sensor signals in accordance with a predetermined method during a step B characterized in that the sensor signals are monitored and processed discontinuously in time in view of the standby mode of step A. See, *U.S. Patent Application Serial No. 10/537,878* at page 3, lines 18-25.

6.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-3 and 9 stand finally rejected under 35 U.S.C. §102(b) as being

anticipated by U.S. Patent No. 6,122,960 to *Hutchings* et al.

Claims 4-8 and 10-13 stand finally rejected under 35 U.S.C. §103(a) as being

unpatentable over U.S. Patent No. 6,122,960 to *Hutchings* in view of U.S. Patent No.

6,201,476 B1 to *Depeursinge* et al. or a reference entitled "A continuous patient activity

monitor: validation and relation to disability" to *Walker* et al.

7.   ARGUMENT

    A. *Hutchings*

    A careful review of *Hutchings* reveals a failure by *Hutchings* to teach a device

that monitor and processes sensor signals discontinuously in time.

    Specifically, *Hutchings* teaches a device that monitor and processes sensor signals

on a continuous basis to thereby measure distance traveled, speed and height jumped by a

person while running or walking. Such measurements are performed by measurement

cycles whereby each measurement cycle is initiated and completed in dependence upon

the sensor signals. Thus, the device of *Hutchings* must continuously monitor and process

the sensor signals to (1) determine when to end a current measurement cycle to thereby

initiate a new measurement cycle and (2) perform the proper measurements during each

measurement cycle. This is evidenced by the failure of Hutchings to teach a standby

mode, a sleep mode or the like. See, *Hutchings* at the Abstract; column 4, lines 8-41 and

column 23, line 56 to column 25, line 62.

    Examiner Shah's misinterpretation of *Hutchings* is based on Examiner Shah's

failure to understand that while the measurement cycles of *Hutchings* are discrete

measurements made over different period of times, the beginning and the ending of each

measurement cycle is dependent upon a monitoring and processing of the sensor signals

of *Hutchings* to thereby obtain continuous calculation of factors defining the beginning

and ending of each measurement cycle.   In other words, the sensor signals are

continually monitored and processed to thereby continually calculate each factor that defines the time period of each discrete measurement cycle.

For example, *Hutchings* teaches speed is continually calculated whereby a new measurement cycle is initiated at a time when the speed (i.e., velocity) is constant. See, *Hutchings* at column 4, lines 43-49; column 12, lines 41-48; and column 25, lines 27-37. Thus, the sensor signals relevant to the continual calculation of speed must be continually monitored and processed in order for the speed to be continually calculated. This is important to *Hutchings*, because any discontinuous in monitoring and processing of the sensor signals relevant to the calculation of speed could result in a failure of *Hutchings* to properly end a current measurement cycle and to initiate a new measurement cycle when the speed is constant whereby *Hutchings* objectives of accurately determining speed, distance and height performances would not be achieved.

In summary, *Hutchings* fails to teach a device that monitors and processes sensor signals discontinuously in time as evidenced by the failure of *Hutchings* to teach a standby mode, a sleep mode or the like. Moreover, any modification of *Hutchings* to incorporate a standby mode, sleep mode or the like improperly changes the principle operation of *Hutchings* of monitoring and processing sensor signals on a continuous basis to thereby measure distance traveled, speed and height jumped by a person while running or walking.

B. _**35 U.S.C. §102(b) Hutchings Rejection of Claims 1-3 and 9**_

(1) **Anticipation**. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." _Verdegaal Bros. v. Union Oil Co. of California_, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." _Richardson v. Suzuki Motor Co._, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In view of the fact that _Hutchings_ fails to teach a standby mode, a sleep mode or the like, the Appellant respectfully asserts _Hutchings_ fails to anticipate the following limitations of claims 1-3 and 9.

(2) **Group 1: Claims 1 and 9**. The Appellant respectfully traverse the anticipation rejection of independent claim 1, because _Hutchings_ fails to show "characterized in that the activity monitor is operable to monitor and process the sensor signals discontinuously in time" as recited in independent claim 1 and "characterized in that the sensor signals are monitored and processed discontinuously in time" as recited in independent claim 9. Withdrawal of the rejection of independent claims 1 and 9 under 35 U.S.C. §102(b) as being anticipated by _Hutchings_ is therefore respectfully requested.

(3) <u>Group 2: Claim 2</u>. The Appellant respectfully traverse the anticipation rejection of independent claim 2, because *Hutchings* fails to show "<u>wherein the measurement unit is operable to output the sensor signals discontinuously in time</u>" as recited in independent claim 2. Withdrawal of the rejection of independent claim 2 under 35 U.S.C. §102(b) as being anticipated by *Hutchings* is therefore respectfully requested.

(4) <u>Group 3: Claim 3</u>. The Appellant respectfully traverse the anticipation rejection of dependent claim 3, because *Hutchings* fails to show "<u>wherein the processor is operable to monitor the sensor signals discontinuously in time</u>" as recited in dependent claim 3. Withdrawal of the rejection of dependent claim 3 under 35 U.S.C. §102(b) as being anticipated by *Hutchings* is therefore respectfully requested.

C. *<u>35 U.S.C. §103(a) Hutchings Rejection of Claims 4-8 and 10-13</u>*

(1) <u>Obviousness</u>. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. <u>See</u>, MPEP §2143.

In view of the fact that any modification of *Hutchings* to incorporate a standby

mode, sleep mode or the like improperly changes the principle operation of *Hutchings*

of monitoring and processing sensor signals on a continuous basis to thereby measure

distance traveled, speed and height jumped by a person while running or walking, the

Appellant respectfully asserts *Hutchings* teaches away from the following limitations of

claims 4-8 and 10-13.

(2) **Group 4: Claims 4 and 13**. The Appellant respectfully traverse the

obviousness rejection of dependent claims 4 and 13 because *Hutchings* teaches away

from "wherein the processor is operable to monitor the sensor signals in turn" as recited

in dependent claim 4, and "wherein the sensor signals are monitored in turn" as recited in

dependent claim 13. Withdrawal of the rejection of dependent claims 4 and 13 under 35

U.S.C. §103(a) as being unpatentable over *Hutchings* in view of *Depeursinge* or in view

of *Walker* is therefore respectfully requested.

(3) **Group 5: Claim 5**. The Appellant respectfully traverse the

obviousness rejection of dependent claim 5, because *Hutchings* teaches away from

"wherein the processor is operable to enter a monitoring mode of operation in which the

processor monitors the sensor signals and to enter a standby mode of operation in which

no monitoring takes place" as recited in dependent claim 5. Withdrawal of the rejection

of dependent claim 5 under 35 U.S.C. §103(a) as being unpatentable over *Hutchings* in

view of *Depeursinge* or in view of *Walker* is therefore respectfully requested.

(4) **Group 6: Claims 6 and 10**. The Appellant respectfully traverse the

obviousness rejection of dependent claims 6 and 10, because *Hutchings* teaches away

from "wherein the processor is operable to enter the monitoring mode and the standby

mode alternately" as recited in dependent claim 6 and "alternately monitoring the sensor

signals and operating in a standby mode, in which no monitoring takes place, for

respective time periods" as recited in dependent claim 10. Withdrawal of the rejection of

dependent claims 6 and 10 under 35 U.S.C. §103(a) as being unpatentable over

Hutchings in view of *Depeursinge* or in view of *Walker* is therefore respectfully

requested.

(5) **Group 7: Claims 7 and 11**. The Appellant respectfully traverse the

obviousness rejection of dependent claims 7 and 11, because *Hutchings* teaches away

from "wherein respective time periods for the monitoring and standby modes are

variable" as recited in dependent claim 7 and "wherein the respective time periods are

variable" as recited in dependent claim 11. Withdrawal of the rejection of dependent

claims 7 and 11 under 35 U.S.C. §103(a) as being unpatentable over *Hutchings* in view of

Depeursinge or in view of *Walker* is therefore respectfully requested.

(6) Group 8: Claims 8 and 12. The Appellant respectfully traverse the

obviousness rejection of dependent claims 8 and 12, because *Hutchings* teaches away

from "wherein respective time periods for the monitoring and standby modes are fixed"

as recited in dependent claim 8 and "wherein the respective time periods are fixed" as

recited in dependent claim 12. Withdrawal of the rejection of dependent claims 8 and 12

under 35 U.S.C. §103(a) as being unpatentable over *Hutchings* in view of *Depeursinge* or

in view of *Walker* is therefore respectfully requested.

Dated: **October 2, 2006**

Respectfully submitted,
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CLAIMS APPENDIX

1.   An activity monitor comprising:

a measurement unit including a plurality of motion sensors operable to produce respective sensor signals indicative of motion experienced thereby; and

a processor operable to receive the sensor signals from the measurement unit and to process the sensor signals in accordance with a predetermined method,

characterized in that the activity monitor is operable to monitor and process the sensor signals discontinuously in time.

2.   An activity monitor as claimed in claim 1, wherein the measurement unit is operable to output the sensor signals discontinuously in time.

3.   An activity monitor as claimed in claim 1, wherein the processor is operable to monitor the sensor signals discontinuously in time.

4.   An activity monitor as claimed in claim 1, wherein the processor is operable to monitor the sensor signals in turn.

5.   An activity monitor as claimed in claim 1, wherein the processor is operable to enter a monitoring mode of operation in which the processor monitors the sensor signals and to enter a standby mode of operation in which no monitoring takes place.

6.   An activity monitor as claimed in claim 5, wherein the processor is operable to enter the monitoring mode and the standby mode alternately.

7.   An activity monitor as claimed in claim 6, wherein respective time periods for the monitoring and standby modes are variable.

8.   An activity monitor as claimed in claim 6, wherein respective time periods for the monitoring and standby modes are fixed.

9.   A method of monitoring activity using a plurality of motion sensors which are operable to produce respective sensor signals indicative of motion experienced thereby, the method comprising receiving the sensor signals and processing the sensor signals in accordance with a predetermined method, characterized in that the sensor signals are monitored and processed discontinuously in time.

10.   A method as claimed in claim 9, comprising alternately monitoring the sensor signals and operating in a standby mode, in which no monitoring takes place, for respective time periods.

11.   A method as claimed in claim 10, wherein the respective time periods are

variable.

12.   A method as claimed in claim 10, wherein the respective time periods are fixed.

13.   A method as claimed in claim 9, wherein the sensor signals are monitored in turn.

<u>EVIDENCE APPENDIX</u>

None.

RELATED PROCEEDINGS APPENDIX

None.